IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 105 of 2000

with

CRIMINAL APPEAL No 106 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

DINUJI HARIJI CHAVADA

Appearance:

1. Criminal Appeal No. 105 of 2000
MR KP RAVAL for appellant

2. Criminal AppealNo 106 of 2000
MR KP RAVAL for appellant

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE R.P.DHOLAKIA

Date of decision: 15/02/2001

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE R.P.DHOLAKIA)

Criminal Appeal No.105 of 2000 is filed by the State against the order of acquittal passed by the learned Special Judge, Ahmedabad (Rural) at Gandhinagar in Special Case No.15 of 1994 on 17-12-1999 in favour of original accused Nos.2, 3 and 4 whereby the original accused Nos.2, 3 and 4 were acquitted for all the charges levelled against them.

2. Present respondents accused along with accused Jivansinh Ramsinh were charge-sheeted by the Court of learned Special Judge, Ahmedabad (Rural) at Gandhinagar for the offences under Secs.7, 12, 13(1)(d) read with Sec.13(2) of the Prevention of Corruption Act (`the Act' for short) in Special Case No.15 of 1994 wherein after appreciating the evidence on record, learned Special Judge convicted the respondents of Criminal Appeal No.106 of 2000 and appellant of Criminal Appeal No.6 of 2000, who is original accused No.1, by the judgment and order dated 17-12-1999 for the alleged offences under Secs.7, 13(1)(d) read with Sec.13(2) of the Act. The learned Special Judge also convicted the original accused No.1-Jivansinh Ramsinh to suffer RI for 6 months and fine of Rs.500/- in default, RI for one month for the offence under Sec.7 of the Act. The learned Judge also convicted him to suffer RI for one year and fine of Rs.500/- in default, RI for one month for the offence under Sec.13(1)(d) and 13(2) of the Act.

3. At the time of admission, learned APP, Mr.K.P.Raval has submitted a report dated 7-2-2001 of Police Inspector, ACB, Ahmedabad (Rural) at Gandhinagar along with xerox copy of the death certificate of respondent No.1-Muljibhai Shanabhai Parmar declaring that respondent No.1-Muljibhai Shanabhai Parmar expired on 9-12-2000 and, therefore, Criminal Appeal No.105 of 2000 abates in respect of respondent No.2 and is disposed accordingly.

4. We have heard learned APP, Mr.K.P.Raval, who is having certified copies of the evidence and other documents of Special Case No.15 of 1994. We have gone through the same which have been shown to us by learned APP, Mr.K.P.Raval. We have also gone through the judgment delivered by the learned Special Judge and more particularly para 30 at page 30 wherein Court below has dealt with the case of the present respondents in detail.

5. We are aware that the original accused No.1, the

respondent of Criminal Appeal No.106 of 2000, Jivansinh Ramsinh has preferred Criminal Appeal No.6 of 2000 against the order of conviction. Criminal Appeal No.6 of 2000 has been admitted by the learned Single Judge and awaiting for final disposal. Whereas State has preferred Criminal Appeal No.106 of 2000 for enhancement of sentence imposed on Jivansinh Ramsinh. As Criminal Appeal Nos.6 of 2000 and 106 of 2000 were required to be heard together, it is not advisable to discuss and deal with the evidence in detail at this stage because it may prejudice the parties while deciding the above referred appeals and hence, we do not think it fit and proper to discuss the evidence at length here at this stage.

6. Facts remain that the prosecution has failed to establish the case against original accused Nos.2,3 and 4 i.e. present respondents of Criminal Appeal No.105 of 2000 which has been discussed in detail by the learned Special Judge in his judgment in para 30. It has been established from the FIR, panchnama and evidence of the complainant and other oral evidence of the witnesses who were members of the raiding party that there is no direct or indirect evidence which involves the present respondents-original accused Nos.2,3 and 4 with the crime in question. Learned APP is not in a position to show any convincing evidence from the record to support his arguments.

8. We are not discussing the evidence of each witness in detail in view of the observations made by the Hon'ble Apex Court in the case of STATE OF KARNATAKA VS. HEMAREDDY reported in AIR 1981 SC 1417 which reads as under:-

> ".... This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudry (1967) 1 SCR 93: (AIR 1976 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

9. Under the above circumstances, Criminal Appeal No.105 of 2000 is required to be dismissed and is accordingly dismissed.

8. Criminal Appeal No.106 of 2000 is admitted and is sent back to back to office for placing the same along

with Criminal Appeal No.6 of 2000.

(M.H.KADRI,J.) (R.P.DHOLAKIA,J.)

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